IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH, JAIPUR

S.B. Civil Writ Petition No.193/01
The Liquidator, Tonk Sahkari Upbhokta Whole-sale Bhandar, Tonk
Vs.
State & Anr.

15.03.2007

Hon'ble Mr. Justice Mohammad Rafiq

Ms. Anshu Gupta for petitioner.
Mr. Harshwardhan Nandwara, Dy. GA

The petitioner who is the Liquidator of the Tonk Sahakari Upbhokta Wholesale Bhandar has challenged the demand notice dated 5.7.95 served upon the Bhandar by the respondent in regard to recovery of the tax, penalty and interest and has prayed that the said demand notice be declared illegal and the respondents may be restrained from making recovery of the demanded amount.

Ms. Anshu Gupta, the learned counsel for the petitioner argued that such notice should necessarily be preceded by a duly framed assessment order which would in turn required service of notice on the petitioner and giving him an opportunity of hearing. In the present case neither any notice for framing of the assessment order was given nor was any assessment order actually framed. She in this connection relied on a single bench decision of this Court in Rashid Ahmed Vs. D.T.O., Nagaur reported in 1994(2)WLC (Raj.) 328 in which the learned Single Judge of this Court in somewhat similar circumstances held that if there is no assessment order, then no recovery can be made and therefore no attachment of the vehicle can also be

made. Liberty was given to the petitioner in that case to submit an application before the authorities with the direction that the same shall be decided treating the same as rectification application if no assessment order was framed.

On the other hand, Shri Harshwardhan Nandwana, learned Dy. Government Advocate supported the demand notice and stated that the judgment of the learned Single Judge in Rashid Ahmed (supra) cannot be applied because in a subsequent judgment available on the same issue division bench of this Court has taken a different view while directing that the demand notice if it is not preceded by duly framed assessment order, shall be liable to be treated as notice to show cause and thus while remanding

the matter to the Assessing Authority for passing an assessment order afresh, directed the petitioner to submit his reply. In this connection, he cited the division bench judgment in the case of M/s Birla Cement Works & Anr. Vs. State of Rajasthan & Ors. 2000 (1) WLN 431. He submitted this without prejudice to the basic argument that the demand notice has rightly been framed.

Having heard the learned counsel for the parties, I find that even though the writ petition has been contested by the respondent but they have not been able to show whether the assessment order was framed prior to service of demand notice upon the respondents.

In the facts of the case, therefore, the division bench judgment of

this Court in M/s. Birla Cement Works (supra) should squarely apply to the present case. I therefore while allowing the writ petition remand the matter back to the District Transport Officer, Tonk (Rajasthan) by directing that the impugned demand notice dated 5.7.95 shall be treated as show cause notice enabling the petitioner to submit a reply thereto showing the cause as to why the assessment order be not framed against them and if necessary adduce evidence in support of their case. The District Transport Officer shall be at liberty to frame a fresh assessment order. It is directed that the aforesaid demand notice shall not form the basis for making any recovery whatsoever. The further proceedings in the matter shall be abide

by the final assessment order as may be now passed by the District Tonk Officer, Tonk.

The writ petition is accordingly allowed.

(Mohammad Rafiq),J.

Rs/-